



June 28, 1999

Mr. John Steiner  
Division Chief  
Law Department  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR99-1794

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125331.

The City of Austin received a request "to review all proposals submitted under Solicitation No. M09930003, Strategic Planning Facilitation for the Austin Public Library." You seek the determination of this office whether the requested information must be withheld under section 552.110 of the Government Code. As provided by section 552.305, this office provided the entities which submitted the requested proposals to the city -- Resolution Architects ("Resolution"), Qualita, and Internet Communications Corporation ("ICC") -- the opportunity to submit reasons why the information at issue should be withheld. Resolution and Qualita have submitted arguments that portions of the requested information should be withheld under section 552.110 as "trade secrets."

Section 552.110 of the Government Code excepts from required public disclosure

[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

A "trade secret"

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret

information in a business in that it is not simply information as to single or ephemeral events in the conduct of the business, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added). *See also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980); 232 (1979); 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

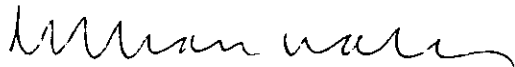
- 1) the extent to which the information is known outside of [the company's] business;
- 2) the extent to which it is known by employees and others involved in [the company's] business;
- 3) the extent of measures taken by [the company] to guard the secrecy of the information;
- 4) the value of the information to [the company] and to [its] competitors;
- 5) the amount of effort or money expended by [the company] in developing this information; and
- 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 232 (1979). This office must accept a claim that information is excepted as a trade secret if a prima facie case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5 (1990). However, where no evidence of the factors necessary to establish a trade secret claim is made we cannot conclude that section 552.110 applies. Open Records Decision No. 402 (1983).

Since ICC has not submitted any arguments as to why its proposal information should be withheld, its requested proposal must be released. Having reviewed Qualita's arguments and its requested proposal, we conclude that it has not shown that any of its proposal is trade secret information subject to section 552.110. Therefore, Qualita's requested proposal must be released. Having reviewed Resolution's arguments and requested proposal, we conclude that it has demonstrated that Attachment B of its proposal may be withheld as a trade secret under section 552.110. *See* Open Records Decision No. 552 at 3 (1990) (customer lists may be withheld as trade secrets under predecessor statute to section 552.110). However, Resolution has not, in our opinion, demonstrated that any other portions of its requested proposal may be withheld under section 552.110. Therefore, except for its Attachment B, which must be withheld, Resolution's requested proposal must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker  
Assistant Attorney General  
Open Records Division

WMW\eaf

Ref: ID# 125331

Encl. Submitted documents

cc: Ms. Sue Thornton  
Sungate Alliance  
1519 Treadwell Street  
Austin, Texas 78704  
(w/o enclosures)